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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,457	09/25/2003	Barry E. Gilman	GIL001-101	4612
7590	08/16/2006		EXAMINER	
DIEDERIKS & WHITELAW, PLC 12471 Dillingham Square, #301 Woodbridge, VA 22192				AYRES, TIMOTHY MICHAEL
		ART UNIT	PAPER NUMBER	
				3637

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/669,457	GILMAN, BARRY E.
	Examiner Timothy M. Ayres	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 01 April 2006.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-9 and 19-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 and 19-21 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 20060807.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

1. This office action vacates the action mailed on 6/08/06 due to the interview on 8/07/06. During the interview the validity of the affidavit filed 4/06/06 was discussed and the diligence was not considered to be a factor. Thus the use of the German Document DE 10121804 has been withdrawn and replaced with European Patent 611,535 to Lang. This action is a non-final action due to the addition of the 102 rejection with Nowak and 103 rejections with Johnson since those reference where previously cited.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent 4,304,502 to Nowak. Nowak teaches a method of retaining food items on a shelving unit of a refrigerator that involves the steps of positioning the food item (4) on the shelving unit (2) between a divider element (10) and a wall (5). The divider element (10) establishes a first and second laterally spaced storage zones as seen in figure 2. The divider (10) is automatically shifted against the food item (4) and rating the item in a snug configuration. The divider is a spring member and is biased towards the wall and as seen by the divider (10') which shows where the divider is when no food item is present. The divider (10) is considered movably attached to the shelving unit

since it can be removed from the shelving unit. The shifting of the divider involves moving the divider relative to the shelving unit and as seen in figure 2, the divider moves relative to the wall (5) and also to the base of the unit.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1- 9 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,859,010 to Jeziorowski in view of European Patent 611535 to Lang and US Patent 6,464,089 to Rankin.

6. Jeziorowski teaches a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon. The shelving unit is defined by as a door pick-off bucket and has one upstanding front wall (40). Jeziorowski does not expressly disclose a retainer assembly with all the specific detail as claimed.

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7. Lang teaches a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element (13) mounted for movement along a defined axis relative to the at least one shelving unit (21,5) and dividing the at least one shelving unit (21,5) into first and second laterally spaced storage zones. The divider element (13) has a support arm (15,16) extending from the divider element (13), said support arm mounting the divider element for sliding movement relative to the at least one shelving unit (21,5). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Jeziorowski by adding a retainer assembly as taught by Lang so that objects can be held separately so as to stand securely in and on the shelf unit.

8. Jeziorowski in view of Lang does not expressly disclose a biasing member urging the divider element, the biasing member being a spiral spring with a first end attached to two plates on the divider, and the second end attached to an opening on the shelf unit.

9. Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration in the first storage zone while maintaining the second storage zone available as additional storage space. Rankin also teaches a spiral spring (20) including a first end portion (60), and a second end portion (50), with the first end portion (60) being attached to the

divider element (34) and the second end portion (50) being attached to the at least one shelving unit (14). The retainer assembly (34) further includes a pair of plates (46) spaced so as to define a cavity between them, said biasing member (20) including a first end portion (60) extending into the defined cavity. The shelving unit (14) formed with at least one opening on the end (16), said biasing member (20) including a second end portion (50) directly attached to the at least one shelving unit (14) through the opening on the end (16). The biasing member constitutes a tension spring (20).

10. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Jeziorowski in view of Lang by adding a biasing member to the front wall and to the divider element as taught by Rankin to allow items that are of different size, shape, surface texture, and weight to be placed in a snug configuration using the same biasing member with minimum effort to adjust for the different items (Rankin '089, Col. 2, lines 40-48).

11. Regarding claim 19-21, the method is obvious given the structure as described above.

12. Claims 1,2, 5-9 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,765,390 To Johnson in view of US Patent 6,464,089 to Rankin. Johnson teaches a refrigerator including a liner and a door. On the door are dikes (15,16) that have fingers to receive buckets or shelving unit (85). The shelving unit (85) has a retainer assembly (112) that is movably attached to a rear wall (91) of the shelving unit. The retainer assembly (112) is attached via a support arm (115) and has

a divider element (113) to divide the shelving unit into two laterally spaced storage zones as seen in figure 4. Johnson does not expressly disclose a biasing member urging the divider element, the biasing member being a spiral spring with a first end attached to two plates on the divider, and the second end attached to an opening on the shelf unit.

13. Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration in the first storage zone while maintaining the second storage zone available as additional storage space. Rankin also teaches a spiral spring (20) including a first end portion (60), and a second end portion (50), with the first end portion (60) being attached to the divider element (34) and the second end portion (50) being attached to the at least one shelving unit (14). The retainer assembly (34) further includes a pair of plates (46) spaced so as to define a cavity between them, said biasing member (20) including a first end portion (60) extending into the defined cavity. The shelving unit (14) formed with at least one opening on the end (16), said biasing member (20) including a second end portion (50) directly attached to the at least one shelving unit (14) through the opening on the end (16). The biasing member constitutes a tension spring (20).

14. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Johnson by adding a biasing member to the rear wall and to the divider element as taught by Rankin to allow items that are of different size, shape, surface texture, and weight to be placed in a snug configuration using the same biasing member with minimum effort to adjust for the different items (Rankin '089, Col. 2, lines 40-48).

15. Regarding claims 19-21, the method is obvious given the structure as described above.

16. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,765,390 To Johnson in view of US Patent 6,464,089 to Rankin as applied to claims 1, 2, 5-9, and 19-21 above, and further in view of secondary reference to Jeziorowski. Johnson teaches that lift-off/pick-off buckets are well known and therefore does not describe the attachment to the refrigerator door (Col. 5, lines 4-11). Using Jeziorowski to show this feature and to show what is meant by bucket as implied by Johnson, a shelving unit (32), with a base (34), sides (36), a rear wall (38), and a front wall (40). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Johnson in view of Rankin by using the divider on a pick-off bucket since the divider will limit the shifting of food items placed upon the shelving unit/ pick-off bucket.

17. It would have been obvious for a person of ordinary skill in the art to modify the refrigerator of Johnson in view of Rankin with secondary reference Jeziorowski by

having the support arm on the retainer assembly be attached to the front wall of the shelving unit, since applicant has not disclosed that having the support arm attach at this specific wall solves any stated problem or is for any particular purpose and it appears that the retainer assembly would perform equally well with support arm attached to the rear wall since it is functionally equivalent and works equally well and since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art.

***Response to Amendment***

18. The declaration filed on 04/06/06 under 37 CFR 1.131 is sufficient to overcome the German patent document (DE 101 21 804 A1) reference.

***Response to Arguments***

19. Applicant's arguments with respect to the rejection(s) using the German Patent document have been fully considered and are persuasive due to the affidavit.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as described above.

20. Applicant's arguments in regards to Rankin and Jeziorowski filed 04/06/06 have been fully considered but they are not persuasive. It does not matter whether Rankin and Jeziorowski teach or don't teach securing items on the shelf to prevent toppling. The claims are directed to the divider being urged to provide a sung configuration with selected items on a shelf, which is what is taught by the combination as described

above. Regarding the arguments for claims 6 and 8, the combination suggested by the examiner would incorporate the structure of Rankin's biasing member and its attachment means that are required to make the spiral spring function by modifying the shelving structure of Jeriorowksi in view of Lang or Johnson into that structure. Specifically adding the opening in the end to allow for the attachment of the second end portion of the spiral spring and adding the plates to the divider element to attach the first end of the spiral spring.

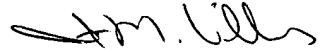
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
8/09/06



JANET M. WILKENS  
PRIMARY EXAMINER  
Art Unit 3637